Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 780/2004 (S/S)

Parvez Ahmad S/o Shri Sameem Ahmad,
R/o Police Line Mohalla Baghora, Urai,
District-Jalaun, U.P.
Dismissed Constable from Police Line,
Nainital.

..... Petitioner.

Versus

1. State of Uttaranchal through Director General of Police, Dehradun,
2. Inspector General of Police, Kumaon Region, Nainital,
3. Senior Superintendent of Police, Nainital.

..... Respondents.

Sri M.S.Bist, learned counsel for the petitioner,
Sri Nand Prasad, learned Standing Counsel for the respondents.

Date: November 19,2005.

Hon'ble P.C. Verma,J.

This writ petition has been filed by the petitioner challenging the orders dated 8th July 2003 and 31st August, 2003 passed by the respondent Nos. 3 & 2 respectively, by which he was dismissed from service.

2. Brief facts of the case giving rise to this petition are that the petitioner was appointed as a Constable in Civil Police on 17.5.1995. The petitioner went on 45 days earned leave on 11.5.1995. The petitioner went on 45 days earned leave on 11.6.2002 to his village. There the petitioner fell seriously ill and was unable to communicate about his illness to the Department and as such he was unable to join his duties on 26.7.2002 after the expiry of aforesaid leave period. The petitioner

received a letter dated 11.1.2003 from the Department and thereafter he sent two letters dated 15.1.2003 and 15.2.2003 to the Department through registered post informing about his illness. When he recovered from his illness, he came back to attend his duties on 03.4.2003 but he was denied to join the duties and was served with a charge sheet on 22.4.2003 requiring him to show cause for his unauthorized absent from 26.7.2002. The petitioner filed his reply specifying that he was seriously ill in the village and was unable to communicate about his illness to the Department. The petitioner also submitted the Medical Certificates and Photostat copy of the registry receipts, however, the Enquiry Officer submitted his report on 25.6.2003 recommending the removal of the petitioner from service. The respondent No.3 passed the impugned order on 8.7.2003 dismissing the petitioner from service against which the petitioner filed appeal which was also dismissed by respondent No.2 on 31st August, 2003.

3. The learned counsel for the petitioner contended that the punishment awarded is too harsh as the punishment of dismissal could not have been awarded for over stay of 252 days despite the explanation given for the absence. It could have been converted into leave without lay or some minor punishment could have been awarded.

4. Learned Standing Counsel for the State submitted that since the petitioner was in a Police discipline, considering the nature of duties of the Police force, the punishment awarded cannot be said to be harsh.

5. Having regard to the facts and circumstances of the case, I feel that the order of dismissal is too harsh. Therefore, the order of dismissal is set aside. The respondents are directed to censure his conduct and stop his two increments. The petitioner shall be reinstated in service, but no back wages shall be paid to him.

6. With the aforesaid observations, the writ petition is disposed of. No order as to costs.

(P.C.Verma,J.)
19.11.2005.

P.Singh